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HUMAN RIGHTS COMMITTEE

Forty-first session

SUMMARY RECORD OF THE FIRST PART (CLOSED)** OF THE 1062nd MEETING

Held at Headquarters, New York,
on Thursday, 11 April 1991 at 3 p.m.

Chairman: Mr. POCAR

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Consideration of communications under the Optional Protocol to the Covenant (continued)

* All persons handling this document are requested to respect and observe its confidential nature.

** The summary record of the second part (public) of the meeting appears as document CCPR/C/SR.1062/Add.1.

N.B. This record is subject to correction. Participants wishing to submit corrections during the session of the Committee are asked to hand them, in typewritten form, to the Secretary of the Committee. A consolidated corrigendum of the summary records covering the closed meetings of the Committee will be issued shortly after the session.

The meeting was called to order at 3.20 p.m.

CONSIDERATION OF COMMUNICATIONS UNDER THE OPTIONAL PROTOCOL TO THE COVENANT (continued)

Communications Nos. 221/1987 and 323/1988 (CCPR/C/WG/41/DR/221/1987 and 323/1988)

1. Mrs. HIGGINS, speaking as Chairman/Rapporteur of the Working Group, said that the authors were French citizens who claimed to be victims of violations of articles 14, 19, 26 and 27 of the Covenant. They had been charged with vandalizing road signs but had been prevented from using the Breton language, their mother tongue, before the Tribunal because they were also proficient in French. They claimed that their rights under article 14 (1) and 14 (3) (e) and (3) (f) had been violated. The authors maintained that they should have been allowed to use the Breton language in court and provided with interpreters. The French criminal code did not prohibit the use of Breton in court, and they cited examples in paragraph 3.2 of the document. They also claimed discrimination on grounds of language under articles 2 and 26, and of minority rights under article 27.

2. The State party had observed that domestic remedies had not been exhausted, and in relation to article 14 that the authors were perfectly capable of using French and had not requested the services of an interpreter.

3. The authors claimed that the notion of a fair trial within the meaning of article 14 implied that the accused should be allowed to express himself in the language in which he normally expressed himself, and denial of an interpreter constituted a violation of article 14 (3) (e) and (3) (f). The Working Group had observed that article 14 was concerned with procedural equality and the principle of equality of arms in criminal proceedings. On that basis, the French courts had complied with their obligations under article 14, (1) and 14 (3) (e) and (3) (f). French law did not give everyone the right to speak his own language in court, and, as the authors were capable of speaking French, they had suffered no discrimination on grounds of language under article 26. She recommended that the Committee adopt the findings recommended by the Working Group, as contained in paragraph 6 of the draft views, that no violation of any of the provisions of the Covenant had occurred.

4. Mr. WENNERGREN, referring to paragraph 5.6 of the draft views, suggested that for purposes of consistency the wording of the last sentence be changed to "... are the services of an interpreter mandatory". The last sentence of paragraph 5.7 implied that the court should make an inquiry into the linguistic competence of the accused, but it was the responsibility of the parties to request an interpreter if they were not sufficiently proficient in the language of the court. He recommended that the words "to ascertain" in the last sentence of paragraph 5.7 should be replaced by "to take into account".

5. Mr. LALLAH requested that the word "defence" in the last sentence of paragraph 5.6 be deleted.

6. Mr. ANDO wondered whether the last sentence of paragraph 5.8 referred to the first sentence of article 14.

7. Mrs. HIGGINS, replied that the sentence referred to allegations that in a few cases, some Bretons had been provided with interpreters. The State had been more generous than required, but such action did not constitute discrimination against others. She accepted the substance of Mr. Wennergren's and Mr. Lallah's suggestions on the drafting of paragraphs 5.6 and 5.7.

8. Mr. ANDO asked whether specific reference could be made to interpreters in regard to article 14 (3) (f).

9. Mr. MAVROMMATIS said that the last sentence of paragraph 5.8 should make specific reference to interpreters in order to encourage States to provide interpretation in more cases where linguistic difficulties might exist.

10. Mr. DIMITRIJEVIC said that the last sentence of paragraph 5.8, if read in isolation without reference to paragraph 4.5, could be confusing. The issue that some Bretons had received a benefit not afforded to others was secondary, and he was concerned that the matter would be given undue importance. He suggested that the final sentence be deleted.

11. Mrs. HIGGINS agreed that the argument should not be overinflated, but the only relevant aspect of article 26 would not be addressed if that sentence was deleted. A previous decision had established that if a benefit was given to some that was not required for all, an article 26 issue could arise. Her instinct was to leave the sentence as it stood, while making specific reference to article 14 (3) (f).

12. Mr. MYULLERSON said that upon further reading, paragraph 5.8, appeared unclear, and he felt it would be preferable to delete the final sentence altogether. It was not known why the individuals referred to had been provided with interpretation, and the subjective judgement of the court judges might have come into play. That did not constitute a violation of article 26.

13. Mr. DIMITRIJEVIC said that, in paragraph 4.5, it was the author's impression that in two cases, Bretons who spoke French had still been provided interpreters. His claim to discrimination under article 26 was based on language, not on the fact that some Bretons had been afforded privileges that he had not received. French law gave discretion to the judge in matters of language. It was possible that some Bretons did not, in fact, speak French well enough for court appearances, and those exceptions should not be made central to the decision. Under the Committee's jurisprudence, that was not a benefit established by law, but by the judge's discretion. It was an unimportant matter and could give rise to confusion, therefore, the sentence should be deleted.

14. Mrs. HIGGINS thanked Mr. Dimitrijevic for highlighting the fact that Committee jurisprudence covered a benefit provided by law, and said that she could accept his argument.

15. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft views recommended by the Working Group, subject to the amendment proposed to paragraphs 5.6, 5.7 and 5.8.

16. It was so decided.

Communication No. 327/1988 (CCPR/C/WG/41/DR/327/1988)

17. Mrs. HIGGINS said that the author was a French citizen who also had been denied the use of the Breton language in court after being arrested for defacing road signs. He also claimed violation of his rights under articles 2, 14, 19, 26 and 27 of the Covenant. The arguments put forward by the author and by the State party were identical to those in the previous communications. She suggested that a statement be inserted between paragraphs 5.2 and 5.3 of the draft views to the effect that no issue had been found under article 19. The language of paragraphs 5.5 and 5.6 should be changed to match the changes made in the previous communications.

18. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the draft views recommended by the Working Group, subject to the drafting amendments proposed by Mrs. Higgins.

19. It was so decided.

Communication No. 313/1988 (CCPR/C/WG/41/DR/313/1988)

20. Mrs. HIGGINS, speaking as Special Rapporteur for New Communications, said that the author, a Jamaican citizen currently awaiting execution having been convicted of murder, maintained that he was innocent. He alleged that the State party had violated articles 7, 10 and 14 of the Covenant because he had been physically maltreated upon arrest and had not been placed on identification parade; the legal aid attorney assigned to his case had made an inadequate defence; the prosecution witness had not been cross-examined and no witnesses had been called in his defence; and he had not been able to meet with the legal aid attorney assigned to him for the appeal.

21. The author's counsel had recently confirmed that preparations for an appeal to the Privy Council were well advanced and that she expected to be able to file the requisite petition very shortly.

22. The State party contended that the author had not exhausted domestic remedies.

23. In the draft views, the Working Group had concurred that the requirement of the Optional Protocol on exhaustion of all available domestic remedies had

(Mrs. Higgins)

not been met in respect of any of the articles invoked. The Working Group was consequently recommending that the Committee should decide that the communication was inadmissible since the claim did not meet that requirement but that at the same time it should request the State party to ensure that all necessary documents be made available without further delay so as to permit an effective recourse to the Privy Council and further request the State party, under rule 86 of the Committee's rules of procedure, not to carry out the death sentence against the author before he had had a reasonable time, after completing the effective domestic remedies available to him, to request the Committee to review its decision, if he were to do so once the reasons for inadmissibility no longer applied.

24. Mr. MAVROMMATIS said that he fully supported the proposed decision in paragraph 6 to declare the communication inadmissible, but wished to emphasize that he was agreeing only on an exceptional basis, that, after the finding of inadmissibility, the Committee should proceed in paragraph 6 (c) to make the request under rule 86.

25. The CHAIRMAN observed that such a request had been made in several analogous cases.

26. Mr. WENNERGREN suggested that the Committee's explanation of the author's non-exhaustion of local remedies should be made more specific in paragraph 5.4 of the draft views.

27. Mrs. HIGGINS proposed accordingly that the first sentence of paragraph 5.4 should be amended to read: "With regard to the author's allegations under articles 7 and 10 of the Covenant, concerning torture and beatings during his detention, the Committee notes that although a legal aid lawyer had been assigned to him, his submissions to the Committee do not show that the author complained to the competent authorities about these events, etc.".

28. Mr. LALLAH said that since the Committee was not prepared to consider the case on the merits, he did not see why it should pronounce on the merits as it did in paragraphs 5.3 and 5.4 of the draft views.

29. Mrs. HIGGINS said that Mr. Lallah's point was well taken and that paragraph 5.3 regarding the State party's obligation to provide proper legal assistance in capital cases under article 14 (3) (d) of the Covenant could be deleted. Paragraph 5.4 must be retained, however, for it indicated that the author must exhaust local remedies on the claims under articles 7 and 10 as well.

30. The CHAIRMAN said that, if he heard no objection, he would take it that the Committee wished to adopt the decision on admissibility recommended by the Working Group, subject to the deletion and drafting amendment proposed.

31. It was so decided.

The closed meeting rose at 4.15 p.m.